THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, 11th August, 2006

W.P.Nos.3090, 5268, 5270, 5383, 5386, 5920, 7114, 7117 and 7118 of 2003

W.P.No.3090 of 2003

Between:

M/s. Sri Balaji Industries,
rep. by its Partner Sri Kamal Kishore
Kabra, R/o Madnoor (V), Madnoor
Mandal, Nizamabad District, A.P. … Petitioner

and

The Government of Andhra Pradesh,
rep. by the Principal Secretary,
Agricultural and Cooperation (Mktg.II) Dept.,
Secretariat, Hyderabad and others. … Respondents

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W.P.Nos.3090, 5268, 5270, 5383, 5386, 5920, 7114, 7117 and 7118 of 2003

COMMON ORDER:

In all these Writ Petitions, common questions of law and fact arise for consideration; therefore, they are being disposed of by this common Order.

Petitioners are all small scale industries and licensed dealers under Section 7 of the Andhra Pradesh (Agricultural Produce & Livestock) Markets Act,1966 (for short 'the Act'). They purchase cotton and separate the seed from it. The cotton seeds are sold through consignment agents outside the State of Andhra Pradesh i.e. in Maharashtra and Rajasthan. It is their contention that as per Section 12 of the Act, they are liable to pay market fees on the purchase and sale effected within the notified market area. After the seeds are separated from the cotton purchased by them, since there is no market in the State of Andhra Pradesh, they are being sent to Maharashtra and Rajasthan through consignment agents. The seeds are weighed and loaded into lorries and way-bills accompany the lorries. Since no purchase or sale of the cotton seeds is effected within the notified market area, the respondents are not entitled to assess these transactions as presumptive sale and subject them to payment of market fee. The respondents issued the impugned demand notices/assessment orders demanding payment of market fees from

the petitioners stating that as per the returns submitted before the Sales Tax Officer on the sales of cotton seeds effected outside the State of Andhra Pradesh for the year 2001-02 after excluding the turnover of local sales, the market fee is assessed under Section 12(B) of the Act on the net turnover of sales of cotton seeds as per the details furnished therein and the petitioners were directed to pay the said demanded amount within 15 days; otherwise, legal action would be initiated against them under Section 23 of the Act. Aggrieved by the same, the present Writ Petitions are filed.

The 3rd respondent-Market Committee in Writ Petition No.5268 of 2003 filed a detailed common counter affidavit stating *inter alia* that Section 12 of the Act is unambiguous in this regard. Once it is presumed that even lifting or transporting stocks from the notified market area as a sale or purchase, the petitioners are bound to pay the market fees. Since the petitioners have not paid and have not furnished any details, on the basis of the sales tax returns filed by them, the assessment orders are made and demand notices are issued.

Sri C. Kodanda Ram, learned counsel appearing for the petitioners, strenuously contended that in the entire Act, there is no provision for assessing the market fees for the sales, which are effected outside the State through consignment sales. According to him, the consignment sale means the goods are sent to a particular person/agency for being sold to any person; thus the real sale is effected outside the State i.e. in Maharashtra and/or in Rajasthan States. Absolutely, there is no sale transaction within the notified market area. Therefore, either under Section 12 of the Act or under any other provisions of the Act, the petitioners are liable to pay market fees. Petitioners have been submitting the returns regularly as per law

i.e. on or before 25th of every month for the transactions of the preceding month. There is no necessity for the respondents to collect information from the Sales Tax Department for the purpose of assessing the market fees for the sales effected outside the State of Andhra Pradesh. Learned counsel, further, to elaborate as to consignment sales, drawn attention of the Court to the assessment orders passed by the Commercial Tax Officer, Bodhan, wherein the exempted turnover and net turnover were described. In the exempted turnover, the consignment sales of cotton seed (covered by F-forms/sale patties) are exempted and further explains that even the sales tax is not collected on the consignment sales of cotton seed. Thus, neither the cotton seeds sold by the petitioners outside the State by way of consignment sales attract the sales tax nor the market fees. Respondents are solely relying upon a legal fiction created under Section 12 of the Act, wherein under Explanation I it is stated that for the purpose of this Section all notified agricultural produce, livestock or products of livestock taken out of a notified market area shall, unless contrary is proved, be presumed to have been purchased or sold within notified market area, which is not permissible in a case of this nature. Learned counsel relied upon a decision reported in **AGRICULTURAL MARKET COMMITTEE v. SHALIMAR CHEMICAL WORKS LTD.**[1] and drawn attention of the Court to paragraphs 26 and 27, which read as under:

> "26. The principle which, therefore, emerges out is that the essential legislative function consists of the determination of the legislative policy and the Legislature cannot abdicate essential legislative function in favour of another. Power to make subsidiary legislation may be entrusted by the Legislature to another body of its choice but the Legislature should, before delegating, enunciate either expressly or by implication, the policy and the principles for the guidance of the delegates. These principles also apply to Taxing Statutes. The effect of these principles is that the delegate which has

been authorised to make subsidiary Rules and Regulations has to work within the scope of its authority and cannot widen or constrict the scope of the Act or the policy laid down thereunder. It cannot, in the garb of making Rules, legislate on the field covered by the Act and has to restrict itself to the mode of implementation of the policy and purpose of the Act.

27. Applying the above principles to the instant case, it will be seen that the market fee can be levied under the Act only on the sales and purchase of notified agricultural produce within the notified area. Explanation I to Section 12 creates a legal fiction and provides that if any notified agricultural produce is taken out of a notified market area, it shall be presumed to have been purchased or sold within such area. The presumption is a rebuttable presumption and can be shown to be not correct. The policy in enacting this provision is only to cover such transactions of sale and purchase for which direct evidence may not be available. Since a notified agricultural produce can be sold only within the notified market area, and, that too, by a trader having a licence issued to him by the Committee, it is obvious that if such commodity is moved out of the notified area, it would mean either that it has been sold or purchased. Otherwise, there would be no occasion to move such commodity out of the notified market area. The legal fiction was thus limited to the "moving" of the commodity from within the market area to a place outside the market area."

and submitted that the consignment sales are not covered by the provisions of the Act. He further relied upon a decision reported in **STATE OF BOMBAY v. UNITED MOTORS LTD.**[2] and drawn attention of the Court to paragraph 12, which reads as under:

"12. Having thus provided for the freedom of inter-State trade and commerce subject to the important qualification mentioned above, the authors of the Constitution had to devise a formula of restrictions to be imposed on the State power of taxing sales or purchases involving inter-State elements which would avoid the doubts and difficulties arising out of the imposition of sales tax on the same transaction by several Provincial Legislatures in the country before the commencement of the Constitution. This they did by enacting cl. (1) (a) with the Explanation and cl. (2) of Art. 286. Clause (1) (a) prohibits the taxation of all sales or purchases which take place outside the State, but a localised sale is a troublesome concept, for, a sale is a composite transaction involving as it does several elements such as agreement to sell, transfer of ownership,

> payment of the price, delivery of the goods and so forth, which may take place at different places. How, then, is it to be determined, whether a particular sale or purchase took place within or outside the State? It is difficult to say that any one of the ingredients mentioned above is more essential to a sale or purchase than the others. To solve the difficulty an easily applicable test for determining what is an outside sale had to be formulated, and that is what, in our opinion, the Explanation was intended to do. It provides by means of a legal fiction that the State in which the goods sold or purchased are actually delivered for consumption therein is the State in which the sale or purchase is to be considered to have taken place, notwithstanding the property in such goods passed in another State. Why an "outside" sale or purchase is explained by defining what is an inside sale and why actual delivery and consumption in the State are made the determining factors in locating a sale or purchase will presently appear. The test of sufficient territorial nexus was thus replaced by a simpler and more easily workable test : Are the goods actually delivered in the taxing State, as a direct result of a sale or purchase, for the purpose of consumption therein? Then, such sale or purchase shall be deemed to have taken place in that State and outside all other States. The latter States are prohibited from taxing the sale or purchase; the former alone is left free to do so Multiple taxation of the same transaction by different States is also thus avoided."

Learned counsel for the petitioner also relied upon a Judgment of the Apex Court reported in **BENGAL IMMUNITY Co. v. STATE OF BIHAR**[3] for the proposition that the Writ Petition is maintainable when an authority assumes jurisdiction, which was not vested in it. In the said decision, it was observed as under:

> "6……The contention of the appellant company is that the Act which authorises the assessment, levying and collection of sales tax on interstate trade contravenes and constitutes an infringement of Art. 286 and is, therefore, '*ultra vires*', void and unenforceable. If, therefore, this contention be well founded, the remedy by way of a writ must, on principle and authority, be available to the party aggrieved."

Per contra, learned counsel for the respondent-Market Committees contended that the issue involved in question is no more *res integra* and the same has already been decided by this Court in

Writ Petition Nos.8387 and 8412 of 2003, dated 16-7-2004 wherein it was held that the Agricultural Market Committee is at liberty to make an enquiry and can pass appropriate orders including that of assessment of market fees, by specifying the persons who are liable to pay the same. The application of provisions of Explanation I to Section 12 of the Act are subject to verification of records and enquiry. Therefore, it cannot be said that the respondents have no power under the Act to levy market fee on the so- called consignment sales. He relied upon the very same decision as was relied upon by the learned counsel for the petitioners in **SHALIMAR CHEMICAL WORKS LTD.** case (1 supra) and drawn attention of the Court to paragraphs 27 and 28 and submitted that a matter of this nature is always decided only on the basis of enquiry and the evidence let therein; but it cannot be said that the authorities have no power to enquire into as to consignment sales etc.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and gone through the impugned demand notices/assessment orders and other material made available on record.

At the outset, I am of the opinion that no sales have been effected by the petitioners within the notified market area. It is not the case of the respondents that the petitioners while transporting cotton seeds on lorries to the other States like Maharashtra and Rajasthan, the way bills and other required information was not furnished. The petitioners are supposed to file returns only as to the goods, which are supposed to be subjected to levy of market fees and not of other goods. The fact that weighment of the goods, loading the same into lorries and transporting them to other States itself does not mean that a presumption can be drawn that the goods were subject to sale in the

notified market area. Rule 75 of the Andhra Pradesh (Agricultural Produce & Livestock) Market Rules,1969 contemplates that no person shall transport any notified agricultural produce purchased or sold in the notified market area, from the limits thereof, except on production of receipt for payment of prescribed fees in respect of such notified agriculture produce. Petitioners have been showing all the documents at the check post and passing through the same, since the goods are not purchased or sold within the notified market area. Only on the basis of some presumption and on the basis of sales-tax returns, the impugned demand notices/assessment orders have been passed by the authorities, without properly considering the provisions of law.

The very demand notices issued by the respondent-Market Committee on the basis of the assessment orders issued by the Sales Tax Officer concerned reveal that the market fees is levied on the net sales value at outside State. May be, the petitioners were asked to submit their explanation. They have, in fact, submitted their explanation stating that they are consignment sales and no sale, physically and practically, effected within the notified market area; therefore, they are not liable for payment of market fees. It is not the case of the respondents that the petitioners have not submitted the monthly returns as usual or they have suppressed any information when the goods were passing through the check posts. Therefore, the respondents cannot assume jurisdiction of the sales that are made outside the State and subject those goods to the market fees in the guise of presumption under Section 12 of the Act. In fact, the presumption is rebutted by their own demand notices that the sales were effected outside the State. The Judgments relied upon by the learned counsel for the petitioners support the case of the petitioners as to what extent and under what circumstances, the presumption

under Explanation I to Section 12 of the Act is available in cases of this nature. The decision relied upon by the learned counsel for the respondents has no relevance to the facts of the present cases.

In the above backdrop, I am of the opinion that the goods weighed, loaded and transported by the petitioners are meant for consignment sales i.e. sales to be effected in other States. Therefore, they cannot be subjected to market fees on the presumption that the goods are taken out of the notified market area. Since the demand notices are issued only on the basis of the sales tax returns filed by the petitioners and they themselves indicate that the market fees is being levied on the sales effected outside the State, there is no necessity of further enquiry into these matters. Thus, the impugned Orders are liable to be set aside and are accordingly set aside.

Accordingly, the Writ Petitions are allowed. No costs.

However, this will not preclude the authorities from enquiring into or stopping and checking any vehicle carrying unauthorizedly any notified agricultural produce, livestock or products of livestock from any place within the limits of any notified market area, i.e. without paying any market fees where the sales or purchases are effected in the notified market area.

11-8-2006

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[1] AIR 1997 SC 2502

[2] AIR 1953 SC 252

[3] AIR 1955 SC 661